IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 363 of 2000
In
COMPANY PETITION No. 216 of 1996
With
COMPANY APPLICATION No. 80 of 2001
In
COMPANY PETITION No. 216 of 1996
With
COMPANY APPLICATION No. 404 of 2003
In
COMPANY PETITION No. 154 of 1998
With
COMPANY APPLICATION No. 258 of 2004
In
COMPANY PETITION No. 154 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

CIFCO FINANCE LTD. - Applicant
Versus
KRISHNA PLASTOCHEM LTD. & 5 - Respondents

==========

Appearance :

1. Company Application No. 363 of 2000

MR UNMESH D SHUKLA for Applicant.
OFFICIAL LIQUIDATOR for Respondent No. 1.
MR RD DAVE for Respondent No. 1.
MR HM BHAGAT for Respondent Nos. 2,3 & 5.
MR RA MISHRA for Respondent No. 2.

2. Company Application No. 80 of 2001

MR SURESH M SHAH for Applicant.
OFFICIAL LIQUIDATOR for Respondent No. 1.

3. Company Application No. 404 of 2003

MR PERCY KAVINA for Applicant.
OFFICIAL LIQUIDATOR for Respondent No. 1.
MR BAIJU BHAGAT for respondent No. 4.

4. Company Application No. 258 of 2004

MRS. SANGITA N. PAHWA for Applicant.
OFFICIAL LIQUIDATOR for Respondent No. 1.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 09/01/2006

COMMON ORAL JUDGMENT

1.All these Company Applications are in respect of properties of Krishna Plastochem Limited (In Liquidation) and somewhat same or similar

prayers are made therein and hence all are heard and disposed of together by this common judgment and order.

2.Company Application No. 363 of 2000 is filed by Cifco Finance Limited on 18.08.2000 praying for leave of this Court to continue Suit No. 3711 of 1998 against the Company and guarantors, instituted in the High Court of Judicature at Mumbai. The applicant has also prayed for the direction to the Company acting through the Official Liquidator to dismantle, return and hand over the equipment or to permit the applicant to dismantle and take away the equipment described in the Summary Schedule annexed to the hire purchase agreement dated 18.07.1997.

3.Company Application No. 80 of 2001 is filed by Swift Finance (India) Limited on 16.03.2001 seeking leave of this Court to proceed with

Suit No. 3585 of 1998 pending before the High Court of Judicature at Mumbai. The applicant has also prayed for the direction to the Company to release the properties in question from the custody and/or control of the Official Liquidator.

4. Company Application No. 404 of 2003 is filed by Fortis Financial Services Limited on 15.07.2003 praying for the direction to the Company to handover the applicant, possession of the plant and machinery described in Exh. B to the affidavit filed in support of the judges summons. The applicant has also sought for the directions to the Company to take all such steps including demolishing any fixtures if necessary in order to remove the said plant and machinery belonging to the applicant and/or for breaking up the walls of the works of the Company for physically delivering the said plant and machinery to the applicant. The

applicant has also sought the permission to sell the plant and machinery on as is where is basis from the premises of the Company itself.

5. Company Application No. 258 of 2004 is filed by Mumbai Labour Union on 04.02.2004 seeking direction of this Court to the respondent to constitute Sale Committee for disposal of the assets of the Company in liquidation so as to enable the respondent to realize the sale proceeds and satisfy the dues of the workman attached to the applicant Union. The applicant has also prayed for the direction to the Official Liquidator of the Company in liquidation to pay the dues of the workman who are the members of the applicant Union as per the claim submitted to the Official Liquidator and which is also submitted along with the affidavit filed in support of the Judges Summons.

6.As far as Company Application No. 363 of 2000 is concerned, it is the case of the applicant that the applicant and the respondent Company entered into a hire purchase agreement dated 18.07.1995 and by virtue of the said agreement, the equipment mentioned in the Hire Purchase Summary Schedule to the agreement was provided to the respondent Company on hire purchase basis for a period of 36 months. The applicant having agreed to give on hire the equipments to the respondent Company and to secure due payment thereof, the respondent Company along with one Mr. K. Ranganathan jointly and severally executed in favour of the applicant (i) a demand promissory note promising to pay on demand the sum of Rs. 67,50,000/- to the applicant and (ii) a letter of continuity. The respondent No. 1 Company was liable to pay hire purchase installment of Rs. 5,62,613/- quarterly in advance by post dated cheques. The agreement clearly stipulated that the

equipment was to vest in the applicant and that during the tenure of the agreement, the respondent No. 1 was merely a hirer having no right, title or interest much less ownership of the equipment. Mr. Ranganathan has given joint and several guarantee without demur the repayment of lessee/hirer to the applicant of the installments interest and other charges of lease/hire purchase finance of Rs. 67,50,000/-.

7. It is also the case of the applicant that the respondent Company committed gross and substantial defaults in discharge of its obligations under the agreement. Some of the post dated cheques issued by the respondent Company were dishonoured upon presentation for payment and the same were returned for insufficient funds. Inspite of repeated requests and reminders, the respondent Company has failed and neglected to discharge its obligations under the agreement and continued

to default in payment of hire charges and other moneys payable under the agreement. Since the respondent Company has failed to pay the amount of Rs. 47,99,979.69, the applicant has filed Civil Suit No. 3711 of 1996 in the High Court of Judicature at Mumbai for recovery of its dues. The High Court has passed an order appointing Receiver in respect of the equipments provided on hire purchase basis to the respondent Company. However, such Receiver could not take possession of the equipments in view of the fact that the respondent Company was ordered to be wound up by the order of this Court and the Official Liquidator attached to this Court was appointed as the liquidator of the Company.

8. In the above view of the matter, the applicant has filed the present application before this Court seeking appropriate order for return of the equipments provided to the respondent

Company on hire purchase basis. Since the agreement did not create any right, title or interest or ownership of the respondent Company in the equipments, such equipments are liable to be returned to the applicant. It is also the case of the applicant that upon termination of the hire purchase agreement, the respondent Company was liable to return the equipments forthwith and by unlawfully and improperly retaining the equipments, the respondent Company was further liable to pay compensation to the applicant.

9.Similar is the case of the applicant in Company Application No. 80 of 2001. In this case, the respondent Company, while it was a going concern, was in need of various equipments in the nature of Tank with Coils, Storage Tanks, Acid Tanks and Heat Exchanger and as such, at the request of the respondent Company, a lease agreement came to be duly executed on

25.09.1995 between the applicant and the respondent Company, providing for letting the equipments as specified in Schedule I of the said Agreement. As per the said agreement, the respondent Company was entitled to hold and use the same on leasehold and/or bailment basis only for a stipulated period and reserving therein all the proprietary rights, title and interests in respect of the properties in question in favour of the applicant. The agreement further provides regular payment of lease rent and as regards return of the properties in question to the applicant and indemnification as against any loss, damage or liability arising from any legal action or process against the respondent Company. Pursuant to the Lease agreement, the properties in question were delivered to the respondent Company and have been kept at the premises of the respondent Company situated at T-150, MIDC, Tarapore, Thane.

10.It is also the case of the applicant that the respondent Company committed default in payment of the lease rent as provided under the lease agreement and also committed breach of the terms and conditions thereof. The applicant, after serving a legal notice to the respondent Company as per the lease agreement, filed a suit on 14.07.1998 against the respondent Company as well as against the guarantors to the said lease agreement, for recovery of the dues of the lease rent, with interest thereon and for return of the leased properties in question, with consequential reliefs of mean profits for unauthorized use of the properties in question and of appointment of Receiver. The said suit was filed in the High Court of Judicature at Mumbai and it is still pending. The applicant has taken out Notice of Motion for grant of interim relief inter alia for appointment of Court Receiver in respect of the

properties in question. The High Court passed orders in the said notice of motion on 01.09.1998 as well as on 12.10.1999 appointing Court Receiver in respect of the properties in question and further ordering the Court Receiver to take forcible possession of the properties in question which are lying at the premises of the respondent Company in question and thereafter, to sell the same and to hand over the sale proceeds to the applicant. Here also, the Receiver could not take possession because of the fact that the respondent Company was ordered to be wound up by this Court and the Official Liquidator attached to this Court was appointed as the Liquidator of the Company.

11.Company Application No. 404 of 2003 is filed by Fortis Financial Services Limited praying to handover the applicant, possession of the plant and machinery belonging to the applicant and given on lease by it as lessor to the

respondent Company as lessee under a lease agreement dated 20.12.1995. A detailed description of the said plant and machinery is given in the Schedule attached to the lease agreement. It is the case of the applicant that the applicant has identified a plant and machinery and the same were purchased from the suppliers, namely, Sunil Plastics Industries Pvt. Ltd. at the cost of Rs. 99,75,100/-. The applicant has made the payment of a sum of Rs. 83,49,167/- (after deduction of 1st rental and lease management fees) to the said Suppliers vide Cheque No. 706115 dated 28.12.1995. The Suppliers vide their receipt dated 28.12.1995 have acknowledged the receipt of the said sum. The said plant and machinery was thereafter installed in the Company's factory premises at T-150, M.I.D.C., Tarapur, Post Salwad, Tal. Palghar, Dist. Thane. As per the provisions contained in the said lease agreement, the Company's right to use the said equipment was

subject to its punctual and regular payment of the stipulated lease rentals as per the terms and conditions laid down in the said agreement. The Company agreed to pay to the applicant lease rent for the said plant and machinery at quarterly basis. It was also provided in the said agreement that in the event of the Company committing default in the payment of the rental of the lease rent, the Company would be liable to pay to the applicant overdue compensation at the rate of 24% p.a. from the respective date of default till payment and/or realization. The respondent Company failed to adhere to the payment schedule from the 2nd rental itself and cheques given were also bounced. It is also the case of the applicant that the applicant is the sole and absolute owner of the leased plant and machinery described in the Schedule attached to the lease agreement. Since the respondent Company was ordered to be wound up by this Court and the Official Liquidator

attached to this Court was appointed as the Liquidator of the respondent Company, the applicant could not take back the possession of the plant and machinery and to get the same, the present application is filed by the applicant.

12.In Company Application No. 258 of 2004, it is the case of the applicant Union that the Company in liquidation is closed since number of years and the members of the applicant Union have not been paid their legitimate dues. The Company has been ordered to be wound up by an order dated 29.06.2000 and 19.07.2000 by this Court respectively in Company Petition No. 154 of 1998 and Company Petition No. 107 of 2000. It is also their case that even before winding up order was made, the Company was closed and the legitimate dues of workmen were not paid for over number of years and even after winding up order was made in the year 2000, the workmen

dues are not paid. The applicant Union has already submitted claim with the Official Liquidator. However, in absence of disposal of the assets of the Company in liquidation, the dues of the workmen are not paid by the Official Liquidator. It is in the above background of the matter, the applicant Union has moved the present application with the prayer of constitution of Sale Committee and payment of workmen dues after sale of the properties in liquidation.

13. Looking to the rival claims of the parties and since their claims were disputed by two Secured Creditors, namely, Bank of India and Gujarat State Financial Corporation, this Court has passed a detailed order on 05.02.2002 in Company Application No. 363 of 2000 and Company Application No. 80 of 2001 and observed that though the parties have staked their claims to storage tanks and heat exchanger, for the

present, it is not possible to decide whether the equipments in question are the same for which the parties are staking their rival claims or whether they are different equipments. In this view of the matter, in order to avoid controversy, it would be just and proper to direct the representatives of the applicants as well as representatives of Bank of India and the GSFC along with a representative of the Official Liquidator to go to the factory premises and make physical verification of the equipments lying at the site and also for valuation of the equipments. The Court has also directed all these parties to keep all the relevant documents in their possession available for inspection by the Official Liquidator's representative and the valuer. The Court has also directed them to point out at the time of physical verification the claim of the secured creditors over such equipments. The Court has also

directed the Official Liquidator to submit his report and if inventory was not done earlier, fresh inventory-cum-valuation was ordered to be made simultaneously.

14. Pursuant to the aforesaid directions, the Official Liquidator has filed his report on 31.07.2002. Along with the said report, he has produced Valuation Report of Shri Rajendra R. Shah. He has also drawn the attention of the Court that he has received letter from M/s. India Securities Limited, Mumbai wherein they have stated that they have obtained arbitration award on the machineries claimed by them. Moreover, M/s. 20th Century Finance Corporation Limited has obtained an order from the High Court of Judicature at Mumbai for appointment of Court Receiver for the machineries claimed by them. The Official Liquidator has attached a comparative chart showing the list of machineries claimed by different parties.

15.Considering the report of the Official Liquidator as well as the annexures attached therewith, this Court has passed further order on 04.02.2003 in Company Application No. 80 of 2001 whereby the applicant, namely, Swift Finance (India) Limited was permitted to proceed with the Suit No. 3585 of 1998 and the applicant was directed to pay a sum of Rs. 30,000/- to the Official Liquidator so as to meet with the expenditure which might have to incur for the purpose of defending the suit on behalf of the Company. The leave was granted on condition that final decree which may be passed by the Court shall not be executed without permission of this Court and the applicant shall not be permitted to take possession of the Tanks over which ownership is claimed by the applicant Company. With the said directions and observations, this Court has disposed of Company Application No. 80 of

2001. However, by virtue of an order passed by this Court on 27.11.2003, Company Application No. 80 of 2001 was restored to file.

16.Similarly, this Court has granted permission to the applicant in Company Application No. 363 of 2000 to proceed with the suit vide its order dated 11.08.2003 on the same terms and directed the applicant to deposit a sum of Rs. 30,000/- by way of cost to the Official Liquidator so that he can also arrange for an advocate for continuing the said civil suit pending in the Bombay High Court. The Court has also made it very clear that the decree if passed in the said suit shall not be executed without the permission of this Court. The Court has also made it very clear that the claim of the applicant Company qua the properties referred to in the application would be decided later on.

17.After considering the claim of the rival parties made through their affidavits filed in support of Judges Summons, affidavit-in-reply as well as O.L. Reports, this Court has passed detailed order on 27.11.2003 in Company Application Nos. 80 of 2001, 363 of 2000 as well as Company Application No. 404 of 2003 and issued several directions to the Official Liquidator. The Court was at pains to observe that there were some machineries over which more than one parties had staked their claims. The Court has further observed that there was a common supplier of the machineries claimed by various parties and the name of that supplier was Sunil Plastics Industries Pvt. Ltd. and the Court has also directed that the said party is also required to be impleaded for the purpose of ascertainment of the correct position about the machineries allegedly supplied to the Company in liquidation at the relevant time and the amounts which were made available by the

respective financier to the supplier.

18.Pursuant to the said order, the Official Liquidator has filed his report on 05.03.2004. The Official Liquidator has stated inter alia in the said report that on perusal of the minutes recorded at the time of physical verification of the machineries claimed by various parties, as identified by representatives of various parties and as confirmed by the Valuer appointed by the Official Liquidator, there are several claimants in respect of the same machineries. He has given detailed description of each machinery and the name of the claimants there against. Over and above this, he has further stated in the report that the representatives of the Secured Creditors, namely, IDBI, Bank of India and Canara Bank were present at the site and they have submitted that they are having charge on the assets and properties of the said

Company. To justify their statement, the representatives of IDBI and Canara Bank handed over the list of machineries on which they are having their charge. The representatives of Canara Bank and Bank of India also handed over decrees obtained from the Debt Recovery Tribunal.

19.The Court has heard at length the learned counsels Shri Umesh D. Shukla, Shri S.M. Shah, Shri Percy M. Kavina, Mrs. Sangita N. Pahwa, Mr. R.D. Dave, Mr. R.M. Desai and Mr. R.A. Mishra, appearing for the respective parties and has considered in great detail the pleadings as well as documents produced before the Court. The Court has also gone through the earlier orders passed by this Court from time to time in the above applications. The Company has gone into liquidation in 2000. More than five years have gone. The claims of the parties have still not been finalized. There

are rival claims of the parties in respect of the same machineries. The Court has also made an attempt earlier to issue notice on M/s. Sunil Plastics who was considered to be the common Supplier of these machineries to different parties. During the course of arguments, an allegation was made to the effect that the said party has raised only bogus bills and it cannot be said that the same machineries were supplied by the said party to different claimants. Though the Secured Creditors have obtained the decrees in their favour, suits filed by the financiers are still pending before the Mumbai High Court and this Court has already granted permission to them to proceed with the said suits. Their claims could be decided in the said suits. The condition of the machineries are being deteriorated and there is no consensus amongst the parties to take away the machineries by any legally entitled party. The Official Liquidator has

also raised the bills for Valuer's Fees, advertisement and security charges. The value of machineries is hardly about Rs. 1,00,74,800/-. As against which, the Official Liquidator is said to have incurred expenses of Rs. 9,02,400/- by way of security charges for safeguarding the assets of the said Company at Tarapur Unit. One of the secured creditors, namely, Bank of India, vide its letter addressed to its Counsel M/s. Panesar & Company, a copy of which is placed on record, informed that since the Bank has no charge on the assets of the Company at Tarapur, it has decided not to claim on the plant and machinery of the Company at the unit of Tarapur.

20.In this view of the matter, the machineries are required to be disposed of as early as possible so as to get the optimum price and also to prevent further expenses to be incurred for safeguarding the said assets. Keeping this

aspect in mind, the Court is not inclined to pass any order for return of the machineries to either of the parties and directs the Official Liquidator to proceed with the sale of the said assets. For that purpose, he is permitted to constitute the Sale Committee wherein secured creditors, workmen's representative as well as one representative each of these financiers should be made the members of the said Sale Committee and after inviting the offers for sale of the said assets, the sale would be finalized subject to confirmation by this Court. It is made clear that the Court has not examined the claim of any of the parties and the same will be considered at the time of disbursement of the sale proceeds of these machineries and at that time, the decrees passed by the Courts and/or Debt Recovery Tribunal will be taken into consideration. The Official Liquidator shall also inquire about the progress in the civil suits filed by the

applicants of Company Application Nos. 363 of 2000 and 80 of 2001 in the High Court of Judicature at Mumbai and shall also verify as to whether the said parties have deposited an amount of Rs. 30,000/- each with him as per the directions of this Court and whether he has engaged any counsel in the Mumbai High Court to defend the case of the Company.

21.The Official Liquidator is further directed to file a detailed exhaustive report before this Court fixing the Schedule for sale of the machineries, fixing the upset price and all other relevant particulars. He is further directed to place on record the details with regard to security charges such as the name of security agency, security guards deployed by him, their names and addresses, payments if any made by the security agency to these security guards and also justification for deployment of such securities. The Official Liquidator shall

also include in his report as to whether the Ex-Directors of the Company have filed statement of affairs and if it is not filed, what steps are taken by him.

22.Subject to the aforesaid directions and observations, all these four applications are accordingly disposed of without any order as to costs.

[K.A. PUJ, J.]

S*avariya*